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IN THE

Supreme Court of the United States

OCTOBER TERM 1957

No. 527

THE UNITED STATES,
Petitioner,

vs.

CITIZENS UTILITIES COMPANY, *et ano,*
Respondent.

No. 528

THE CITY OF LOS ANGELES,
Petitioner,

vs.

CITIZENS UTILITIES COMPANY, *et ano,*
Respondents.

ON PETITIONS BY THE UNITED STATES (No. 527) AND THE CITY OF LOS ANGELES (No. 528) FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

BRIEF OF CITIZENS UTILITIES COMPANY IN OPPOSITION

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BRIEF OF CITIZENS UTILITIES COMPANY IN OPPOSITION

Citizens Utilities Company files this Brief in opposition to the Petitions of the United States (Defendant below) and the City of Los Angeles (a Third Party below) for Writs of Certiorari to the United States Court of Claims.

OPINION BELOW

The Opinion of the Court of Claims (United States App. B, pp. 22-32) is reported at 149 Federal Supplement, page 158.

JURISDICTION

On March 6, 1957, in response to cross-motions of all parties for summary judgment solely on the issue of liability, the Court of Claims unanimously granted summary judgment to Respondents (United States App. B, p. 32). On June 5, 1957 Petitioners' applications for rehearing were unanimously denied (United States App. B, p. 32).

QUESTION PRESENTED

Whether an alleged statutory purpose, not stated in the Statute, barred Respondent, the holder of a contract with the United States for electrical energy from Hoover Dam, from renewal of its contract under the plain mandate of Section 5(b) of the Boulder Canyon Project Act, which provides that "The holder of any contract for electrical energy * * * shall be entitled to a renewal thereof * * *."

STATUTE AND REGULATIONS INVOLVED

The United States' Petition significantly omits reference to Section 4(b) of the Boulder Canyon Project Act, 45 Stat. 1058 (43 U. S. C. 617c). (App. A, *infra*, p. 1a). That Petition also fails to set forth the original so-called preference Regulation (City App. A, pp. 4a-12a). Both Petitions set forth only part of the pertinent text of the alleged preference Article of the Secretary of the Interior's 1941 Regulations. (United States App. A, pp. 21-22; City App. A, p. 13a). Additional material portions of that Article are contained in Appendix A, *infra*, pp. 2a-5a.

STATEMENT

The efforts by Petitioners to devise an issue appropriate for the Court's consideration result in distortion of the "Statements" in many crucial respects, by reason of the omission therefrom of certain important facts. Such omissions are supplied below.

Respondent entered into its original contract with the United States on January 7, 1938 (B. 657-673).[1] It provided for the delivery to Respondent of certain quantities of electrical energy from Hoover Dam until December 31, 1954. This energy had originally been a part of a larger block of energy sold by the United States to Metropolitan Water District of Southern California, a Third Party below (B. 323, 351). When Water District, bound by its contract to pay for all of its energy, concluded that until January 1, 1955 it would be unable to use a part of that energy for the only purpose for which it could be lawfully used, it sought relief from the United States. The result was the sale to Respondent.

Prior to December 31, 1954 it was finally and conclusively determined by Water District that, contrary to earlier estimates, it would not require for its own use the energy sold to Respondent until May 31, 1987—the expiration date of its own contract with the United States. When that fact became known, Respondent applied to the Secretary of the Interior for renewal of its contract.

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[1]References "B—" are to the volume which constituted United States' Exhibit I in its Answer filed in the Court below. This volume, which contains the complete text of the contracts involved herein, and certain of the Regulations, is entitled "Boulder Canyon Project Final Reports—Part I—Introductory, Bulletin 2, Hoover Dam Power and Water Contracts and Related Data, the United States Department of Interior, Bureau of Reclamation."

On March 2, 1954 the Secretary formally communicated to Respondent his decision to grant renewal (App. B, *infra*, p. 6a). Respondent immediately communicated to the Secretary its acceptance of the offer of renewal (App. B. *infra*, p. 12a). The Secretary's decision and offer to renew were avowedly based upon an Opinion of his Solicitor's office, copies of which accompanied his communication (App. B, *infra*, pp. 7a-11a).

Despite the fact that the Third Parties, together with Water District, had, prior to March 2, 1954, fully communicated to the Secretary of Interior their reasons for opposition to Respondent's renewal right, they nevertheless persisted in their efforts to deprive Respondent of its source of energy.

Simultaneous with the Secretary's offer of renewal in March, 1954, instructions had been issued by him for the preparation of a formal document of renewal (R. 349). Although that document was prepared by officials of the Department of the Interior (R. 344), it was never executed. On March 2, the Secretary had firmly stated his intention to renew; by September 1, he was equivocating (App. B, *infra*, pp. 14a-17a). Finally, on December 2, 1954 he repudiated his commitment (App. B, *infra*, p. 13a). That repudiation, less than one month before the expiration date of Respondent's original contract, was solely the result of an urgent communication to the Department by regional officials of the Bureau of Reclamation, who adverted in their communication to the precarious position of Respondent and its consumers who did not know at that late date whether the Secretary would honor his renewal agreement or repudiate it (App. B, *infra*, pp. 18a-22a).

After January, 1955, Respondent received no further electrical energy from Hoover Dam. But that energy was not returned to Water District. Water District did not want it for its own use and therefore could not lawfully

receive it. The energy was thereafter delivered by the United States to the City, to Southern California Edison Company, and to California Electric Power Company. Respondent's distribution system, almost literally in the shadow of Hoover Dam, was cut off from any energy from that source.

ARGUMENT

1. Section 5(b) of the Boulder Canyon Project Act conferred a right of renewal on the holder of "any contract" for electrical energy. That section, on its face, conferred a right of renewal upon Respondent. The Court of Claims said (United States App. B., p. 27):

> "The plaintiffs say, correctly, that they were the holders of contracts for electrical energy, and were not in default under their contracts."

It labors the obvious to say that the word "any" means "each and every" in the context of the Statute. The use of the word "any" plainly embraced *all* contracts for Hoover Dam electrical energy, without exception. Respondent's contracts specifically recited that they were made *pursuant* to the provisions of the Boulder Canyon Project and Boulder Canyon Project Adjustment Acts (B. pp. 657-658, 1001-1002). In various places in the contracts, Respondent was expressly denominated a "contractor for energy" (B. pp. 1003, 1005). The same designation was applied to other contractors, including the Third Parties below (B. pp. 836, 862).

Petitioners have never seriously argued that the language of Section 5(b) of the Statute did not, on its face, apply to Respondents. They have relied, and rely here, on the contention that the "purpose" of the Act requires that the language be given a meaning different from what

it says. This position is stated at page 9 of the United States' Petition:

> "The *context* and *purpose* of Section 5(b) requires that this provision [for renewal] apply only to the original allottees of Hoover Dam power * * *." (emphasis supplied).

Basically, Petitioners' claim is that the renewal rights extend *only* to those organizations whose contracts *originally* guaranteed payment of the cost and operation of the project, i.e., those contracts which originally preempted 100% of the firm energy to be generated by the project. The United States is at pains in its Petition, in further support of this argument, to refer to other places in Section 5 of the Act where the word "contract" appears in an attempt to demonstrate that the word "contract" in those places has a meaning limiting it to "primary allottees" (United States Petition, pp. 10-11).

This argument is basically wrong because: first, it is an incorrect analysis of the meaning of the word "contract" and this is demonstrable by reference to another section of the Act; second, even if it had the meaning urged by Petitioners, that limited meaning is at variance with the fact that entities which plainly would not come within it have concededly been granted rights of renewal in frank conformity with what is otherwise the plain meaning of the renewal section.

The United States makes no reference to Section 4(b) of the Statute in its argument about the meaning of the word "contract". That Section (App. A, *infra*, p. 1a) provides that before any money is appropriated for the construction of the dam and power plant, the Secretary of the Interior "shall make provision for revenues *by contract*" adequate in his judgment to secure payment of all expenses of operation and maintenance and repayment within fifty years of all amounts advanced by the United States.

Obviously, these are the same "contracts" as are referred to in Section 5. Just as plainly, alleged "underwriters" were those entities which had made contracts in accordance with Section 4(b) and had thereby provided the foundational requisites which enabled the Secretary of the Interior to commence construction of the project. Necessarily, according to Petitioners' argument, these entities must be the only ones with renewal rights under the Statute. The difficulty is, however, that this is not the case. By that standard there are only two entities, i.e., the City of Los Angeles and the Southern California Edison Company which would be entitled to rights of renewal.

On June 9, 1930 the Attorney General of the United States gave an Opinion to the President on the question whether two contracts with the City of Los Angeles and the Southern California Edison Company, which together guaranteed payment for 64% of the firm energy to be generated at the Hoover Dam, would fulfill the requirements of Section 4(b) of the Act (B. p. 1252 *et seq.*).

Relying only on the contracts between the United States and the City of Los Angeles and the Southern California Edison Company, the Attorney General held that the requirements of Section 4(b) had been met by securing those two contracts. Water District's contract, for 36% of the firm energy, was totally ignored in determining whether there had been compliance with the so-called "underwriter" section of the Statute. The Comptroller General confirmed this on October 10, 1930 (B. p. 1255 *et seq.*). It was further confirmed in various hearings before Committees of the Senate (R. 292).

Yet, Water District has an undisputed right of renewal under the Statute. Indeed, that right of renewal has been reaffirmed in this very case. It follows, therefore, that the right of renewal conferred upon Water District obviously did not result from its status as a so-called "underwriter".

It was not such an "underwriter". Its right of renewal was recognized because the Act says that the holder of "any" contract for electrical energy is entitled to renewal rights.

This is but the first obvious flaw in Petitioners' argument. Even more strikingly demonstrative of its invalidity is the fact that the City of Burbank, the City of Glendale, the City of Pasadena, the Southern Sierras Power Company and the Los Angeles Gas and Electric Corporation all obtained contracts including renewal rights (B. 405, 423, 443, 461, 479). Those contracts were entered into *after* it had been determined that adequate provision had already been made to reimburse the United States for the cost of the project. These contracts were entered into after *100%* of the firm energy of the project had already been contracted for on a guaranteed basis by City, Edison and later, Water District (B. 291, 323). In fact, the allocations to these entities all came from *within* the allocations which the City and the Edison Company had already undertaken in their contracts with the United States. If any or all of the named municipalities or private power companies had declined for any reason to contract for allocations of energy, the City and Edison under their contracts were already obligated to take and or pay for such allocations. How then can it be said these contractors were "original allottees", "primary allottees" or "underwriters", exclusively entitled to the benefits of renewal? Plainly, they were not. Their rights of renewal, which are contained in their respective contracts and are reaffirmed by the United States in this case, were obtained from the clear mandate of Section 5(b) of the Act, and from no other source. The same holds true for the States, whose contracts were not executed until after the passage of the Adjustment Act. Yet the States have rights of renewal (B. 1107)

Since Petitioners' only real argument against application of the plain meaning of the language of Section 5(b) is so obviously without substance, we submit that the Court of Claims was correct in its holding that the United States was liable to Respondent for failure to honor its statutory right of renewal.

2. After the rendition of Judgment on March 6, 1957, Petitioners and the remaining third parties moved for reargument below (R. 619, 641, 661, 671, 685). The belated premise of that motion was that the language of Section 5(b) of the Act required an incorporation of Article 4(b)(iv) of the Secretary's 1941 Regulations. Petitioners contended that those words of Section 5(b) which called for renewal "upon such terms and conditions as may be authorized or required under then existing laws and regulations" exempted the United States from liability because those words made the renewal right subject, as of January 1, 1955, to the alleged Regulation preference rights in the third parties. While movants below conceded that the Secretary's Regulations could subject the renewal right only to "reasonable limitation" and not to "complete negation," nevertheless, it was and is contended that the Regulations rendered the United States "without responsibility" (R. 627, 628).

In truth, Petitioners' would have had the Court below construe Section 5(b) as if it read:

> "The holder of any contract for electrical energy not in default thereunder shall be entitled to a renewal thereof *if* such renewal be authorized or required under existing laws and regulations * * *" (Emphasis supplied).

Petitioners' argument, notwithstanding, Section 5(b) does not so read, and cannot properly be so construed. Congress did not say that renewal shall take place "if". Congress said that renewal shall take place and that the

terms and conditions to be included in the renewal, such as rates for energy (B. 1135), charges for generation (B. 1142), provision for adjustment of rates (B. 1138), terms for settlement of disputes (B. 1146), and procedures in the event of default (B. 1146), to mention a few, shall be such as are provided in those Regulations.

It is absurd to suggest that a basic right such as renewal, deliberately conferred by Congress in plain language, was intended to be subjected to complete destruction by Regulations of the Secretary at any time.

Besides this defect in Petitioners' argument, there is one additional fact which completely destroys it. As of December 31, 1954 there were no preference Regulations in existence relating to Water District's basic allocation of firm energy (from which Respondent's energy came). That alleged preference right had been eliminated from the Regulations, since the reason for its existence had disappeared (United States App. B. p. 25).

The original statement of alleged preference rights was in Article V of the Secretary's 1930 Regulations (B. 1119). These were revised by the Secretary's 1941 Regulations (B. 1131). It is claimed that the 1941 Regulations, in Article 4, repromulgate the preference rights.

Article 4 of the 1941 Regulations is entitled "ALLOCATION OF ENERGY." Section (a) of that Article is entitled "Firm energy." There are set forth in that section the allocations of firm energy (including that of Water District, of 35.2517%). This Section of Article 4, dealing as it does with Water District's allocation of firm energy, a portion of which allocation is the very and only energy involved in this case, contains no provision for any preference rights. This is indisputable. (App. A, *infra*, pp. 2a-3a)

Section (b) of Article 4 (App. A; *infra*, pp. 3a-5a) is the section on which Petitioners rely to establish the so-called preference rights. That section is entitled "Procedure respecting *States*' allocation" (emphasis supplied).

Section (b) deals first with what happens if either the States of Arizona or Nevada should fail to take their full allocations of energy. Obviously, this has no reference to the energy here in question. The Section continues to make provision in the event that firm energy allocated to the States, the City of Los Angeles, the Edison Company and the California Electric Power Company is not being used by those entities (B. 1132). Obviously that provision has no pertinence to the energy here in question. It is then provided that so much energy allocated to the States and not contracted for by them and not in use by them or Water District shall be taken and paid for in stipulated percentages by the City, Edison Company and California Electric. Nevertheless, "*Such energy* shall be released *to* the District" (emphasis supplied) by the said parties in certain ratios under certain contingencies. There follow four subdivisions relating to the energy defined above, the last of which, (subdivision (iv)), is asserted to be the third parties' preference rights to Respondent's energy.

Entirely aside from the content of the four sub-divisions, it is to be noted that they are all specifically limited by their introduction to a release of energy *to* the District (and not *by* it) *by* the third parties (and not *to* them). "Such energy" as is to be released *to* the District is the same energy described in the sentence next preceding, i.e. "So much of the energy allocated to the States * * *." Therefore the four sub-divisions which follow can have nothing whatever to do with District's own basic allocation of firm energy (and therefore, with Respondent's energy) which is dealt with in Section (a) of Article 4.

"Sub-division" (iv) of Section (b) states:

> "In the event the District shall fail for any reason to use all or any of the firm energy *herein* allotted to it * * *" (emphasis supplied).

The very wording of sub-division (iv), the so-called preference right, refers to a failure by Water District to

use the energy allotted to it "herein". Respondents' energy was not energy allotted originally to Water District "herein", i.e., in Section (b) of Article 4. Respondents' energy derived only from Water District's original allocation, which is provided for in Section (a) of Article 4.

The fact that alleged preference rights, supposedly contained in the original Regulations did not survive in the 1941 Regulations, is not surprising. By 1941, Water District had constructed its aqueduct and therefore was in a position for all time to utilize Hoover energy for the only purpose for which such energy was allotted to it, i.e., to pump water. The basic rationale for the existence of alleged preference rights, in the first instance, had ceased to exist. All reason for alleged preference rights to Water District's original allocation of firm energy having terminated, the alleged preference rights themselves were eliminated. In their place came alleged preference rights, if such they be, to an entirely different and unrelated block of energy. However that may be, alleged preference rights to energy which came *to* Water District from original allocations of other parties, as contrasted with the block which was the source of Plaintiffs' energy (Water District's own original allocation) have no pertinency to this case.

3. The Court of Claims Opinion considered and decided Respondent's right to renewal under the Statute. In view of that determination, the Court below expressly did not adjudicate several additional and alternative claims of Respondent. (United States, App. B. p. 29)

Respondent claimed below that irrespective of its statutory right to renewal it was entitled to damages for breach by the United States of the contract formed by the Secretary's offer of March 2, 1954 and Respondent's acceptance of March 16, 1954. It was Respondent's claim that the fact that the parties contemplated that a formal written embodiment was to follow was of no consequence where no matter

within the contemplation of the parties was open to further negotiation. (*American Smelting and Refining Co.* v. *United States* 259 U. S. 75, 79 (1922); *United States* v. *Purcell Envelope Co.*, 249 U. S. 313 (1919).) In opposition to Respondent's alternative claim, Petitioners advanced two arguments. The first was that the United States could not be liable for failure to perform under its contract of renewal because it had no authority to enter into such contract of renewal. This was based on the assertion that in May 1945, (B. 1061) the energy then allocated to Respondent was, for the period after December 31, 1954, sold by the United States to the third parties. In reply to this assertion, Respondent showed, first, that the 1945 contract in question, which was stimulated by circumstances having nothing to do with Respondent's energy, did not in fact purport to sell that energy for the period after December 31, 1954. Therefore, it was Respondent's position that, statutory right of renewal aside, there was no lack of authority on the Secretary's part to make his contract of renewal for the period commencing January 1, 1955. It was also shown that the parties to the 1945 contract, by means of charts of estimated available energy for sale, had definitely not included Respondent's allocation as a block of energy which was then available for disposal in that contract. (R. 305, 306).

Second, Petitioners claimed below that the Secretary was unauthorized to make his renewal contract because the Secretary's preference Regulation required that he give first option to the energy to the third parties. In reply to this argument Respondent showed that the preference rights claimed by the Third Parties had been waived in 1938 and that such waiver was required by the Regulations to be effective *until* such time as Water District required the return of the energy for its own use (B. 659, R. 309, 310, 313, 314).

Finally, it was contended by Respondent that it had justifiably relied upon the Secretary's renewal to its detriment and that this circumstance rendered the United States liable for the ultimate repudiation of this agreement.

4. Petitioners contend that the Decision below is of far-reaching consequence with respect to the administration of Hoover Dam. Significantly, there is not one statement of any particular respect in which such effect is anticipated. The City of Los Angeles erroneously argues that the Court below has directed a renewal (City Petition, p. 15) and such renewal entails expense to the United States for facilities and the like (City Petition, p. 14). The Decision below did no such thing. It merely established the liability of the United States for damages. Even if the case had been one for specific performance it is plain that no expense would have been imposed on the United States for resumption of the supply of energy to Respondent.

Furthermore, the state of affairs with respect to contracts for Hoover energy is such that this question does not affect any contractor for energy other than Respondents, and it is almost impossible that it would ever recur, particularly in view of the fact that all contractors, far from having surplus energy for disposal, are in fact competing for additional allocations, as indeed this case plainly demonstrates.

In what can only be at this time a disingenuous attempt to suggest to this Court that the Decision below has consequences so cataclysmic to orderly administration as to impel this Court's attention, Petitioner says (United States Petition, pp. 16-17):

> "As a result of this decision, the Secretary of Interior cannot safely make any short-term interim arrangements for disposition of surplus en[illegible]

since such temporary contracts are now automatically clothed with the statutory renewal rights which the Court of Claims has read into respondents' resale contracts."

But this is patently specious.

The only effect of the Decision of the Court below is to hold that a disposition of any part of a contractor's allocation of energy shall *continue* to be effective until that contractor once more requires the energy for its own use. This is exactly what is recited in the third "Whereas" clause of Respondent's contract (R. 1002). Parties other than the original contractor for the energy in question and the party which receives the energy disposed of, can have no complaint about this arrangement. Such third parties would not under any circumstances be entitled to participate in the use of that energy had the original contractor not relinquished it; and, to the extent that alleged preference rights exist in third parties to an *original* redisposition of energy (See: *California Electric Power Company* v. *United States*, 104 C. Cls. 289), they are amply able to protect themselves by exercising their preference rights at the time of the original redisposition.

Contrary to Petitioners' somewhat irresponsible appraisals of the effect of the Decision below, which try to depict it as granting Respondent rights permanently superior to those of Water District, the Decision does no such thing. Respondent has always conceded that Water District had superior rights to reclaim for its own use, as of January 1, 1955, the energy under contract to Respondent. Water District did not reclaim the energy. The Decision below simply holds that having failed to do so because of its announcement that it had no use for the energy until May 31, 1987, Respondent had the right to that energy in conformity with Section 5(b) of the Act.

Finally, Petitioners make recurring use of the argument that whatever statutory renewal rights Respondent possessed were "legitimately extinguished by the execution of the 1945 contract with the third parties." (United States Petition, p. 16) This retrospective improvisation was rejected by the Court of Claims which said (United States Appendix B, p. 29):

> "But we think that the intention of the Government and the third parties when they made the 1945 contract is not conclusive, and indeed is scarcely relevant, so far as the plaintiffs are concerned."

Plainly, the Court of Claims was giving expression to the obvious principle that the provisions of a contract cannot nullify the clear mandate of a statute which confers rights on an entity which is not a party to the contract.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petitions for Writs of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

Section 4(b) of the Boulder Canyon Project Act of 1928, 43 U. S. C. 617c, 45 Stat. 1058, provides as follows:

(b) Before any money is appropriated for the construction of said dam or power plant, or any construction work done or contracted for, the Secretary of the Interior shall make provision for revenues by contract, in accordance with the provisions of this act, adequate in his judgment to insure payment of all expenses of operation and maintenance of said works incurred by the United States and the repayment, within fifty years from the date of the completion of said works, of all amounts advanced to the fund under subdivision (b) of section 2 for such works, together with interest thereon made reimbursable under this act.

Article 4 of the 1941 Regulations (B. 1131) provided:

4. Allocation of Energy

(a) *Firm energy*

Firm energy shall be allocated as follows:

Allottee	Percentage	Use by allottee restricted to following
State of Nevada	17.6259	In Nevada only.
State of Arizona	17.6259	In Arizona only.
Metropolitan Water District of Southern California (hereinafter called the District).	35.2517	Pumping Colorado River water into and in its aqueduct.
City of Burbank	.5773	
City of Glendale	1.8475	
City of Pasadena (the three last above-named cities are hereinafter called the "municipalities").	1.5847	
City of Los Angeles	17.5554	
Southern California Edison Company Ltd.	7.0503	
The Nevada-California Electric Corp.	.8813	
	100.0000	

The United States reserves such electrical energy as may be desired by it at a maximum demand not to exceed 20,000 kilowatts. Beginning on June 1, 1941 the energy actually taken by the United States under this reservation shall be deducted equally out of the respective allocations of the City and the Company. Such energy shall be delivered to the United States at the Power Plant, and shall be measured at the point of delivery by meters furnished and installed by the United States. Credits to the City and Company for such energy will be given on monthly bills. The United States will use such energy only for its own use or for resale in construction or operating camps maintained by the United States, or for any purpose in the area bounded by the east line of Range 6 East, the south line

of Township 20 South, the east line of Range 62 East, the south line of Township 23 South, M. D. M., Nevada; and the south line of Township 29 North and the east line of Range 21 West, G. & S. R. M., Arizona. The energy used by the United States for the construction and operation and maintenance of the dam and appurtenant works, exclusive of Boulder City, will not be included in the foregoing energy but shall be furnished from the station service system without charge and shall be classed as station losses and not considered in the amounts of firm or secondary energy in the promulgating of rates and charges.

(b) *Procedure respecting States' allocations*

Should either of the States not take its full allocation prior to April 26, 1950, the other may then contract and give notice of withdrawal of the energy not so taken up to 3.9169 per centum of the total firm energy, provided that the combined amount used by the two States shall not, at any time, exceed 35.2518 per centum of such total firm energy.

The District shall have the right to use for pumping Colorado River water into and in its aqueduct, so much of the firm energy allocated to the States, the City, the Company, and The Nevada-California Electric Corporation as may not be in use by them. So much of the energy allocated to the States not contracted for by them and not in use by them or the District, shall be taken and paid for, fifty-five percent (55%) by the City, forty per cent (40%) by the Company and five percent (5%) by the Nevada-California Electric Corporation. Such energy shall be released to the District by the City, Company, and The Nevada-California Electric Corporation, respectively, in the ratio of the above stated percentages (unless they agree upon different ratios, subject to the following provisions:

(i) If the District shall make a firm contract with the United States for the then remaining balance of the period ending May 31, 1987, for part or all of such unused States' energy (subject to the first right of the States thereto) such contract shall be made effective upon two years' written notice to the Secretary, and compensation to the allottees affected for main transmission line property rendered idle;

(ii) If the District does not so make a firm contract for such energy, then energy allocated to the States but not in use by them, shall be released to the District upon not less than fifteen (15) months' written notice to the Secretary and at such compensation as the District and the allottees affected may agree upon, to cover cost and overhead of replacing energy which otherwise would have been received at the Pacific Coast end of the main transmission lines by the allottees affected. Such cost shall include interest (at the rate of cost of money to the allottee affected) on investment in, and depreciation and operation and maintenance of, the plant capacity while required for the generation of such substitute energy; and also appropriate allowance for similar interest on and maintenance and depreciation of plant capacity rendered idle because of cessation of generation of such substitute energy until such time as such plant capacity would otherwise have been installed by the allottees affected for their own requirements. If the District and the allottees affected fail to agree on the amount of such compensation, such energy shall nevertheless be released to the District, and the disagreement shall be determined by arbitration. Pending such determination, energy so released shall be paid for by the District at the rate for firm energy but the determination of compensation by arbitration shall not be controlled by such rate.

(iii) If, due to temporary deficiency in secondary energy regularly used by the District, substitute energy is requested by the District in excess of the energy made available under the foregoing subparagraph (ii) the City, the Company, and/or The Nevada-California Electric Corporation may release so much energy as

may be practicable on the same terms as provided in such subparagraph.

(iv) In the event the District shall fail for any reason to use all or any of the firm energy herein allotted to it, then the Secretary shall dispose of such unused energy until required by the District, crediting on the District's obligation the proceeds of such disposition as received; provided, however, that no disposition of such firm energy shall be made by the Secretary without first giving to the City, the Company and The Nevada-California Electric Corporation the opportunity to contract on equal terms and conditions, to be prescribed by the Secretary, for such energy, in the same proportion, and subject to the same rights with respect to proportions thereof not taken by others, as in the case of secondary energy. The rights of the City, the Company and The Nevada-California Electric Corporation so to contract shall be deemed to have been waived unless, within 30 days after offer by the Secretary of such opportunity, such offer is accepted.

APPENDIX B

Exhibit C

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington 25, D. C.

March 2, 1954

My dear Mr. Gould:

Recently there has been an interchange of correspondence between this office and The City of Los Angeles, the Southern California Edison Company, and the California Electric Power Company, pertaining to an extension of the term of contract of the California-Pacific Utilities Company for power and energy from the Hoover Dam Power plant of the Boulder Canyon Project. A copy of our joint letter to the above three allottees, together with a copy of the Memorandum from the Office of the Solicitor, is enclosed for your information. You will note that we are instructing the Commissioner of Reclamation to extend the term of contract of the California-Pacific Utilities Company as indicated in the joint letter.

If you are interested in extending your contract for Hoover Dam power and energy, it is suggested that you confer with the regional Director of the Bureau of Reclamation at Boulder City, Nevada.

Sincerely yours,

/s/ DOUGLAS MCKAY
Secretary of the Interior

Mr. Milton S. Gould
Citizens Utilities Company
Greenwich, Connecticut.
Enclosures 2

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Washington 25, D. C.

February 18, 1954

Memorandum

To: Under Secretary Tudor
From: William J. Burke
Subject: California-Pacific Utilities Company

The extant contract with the Metropolitan Water District of Southern California is that of May 29, 1941. This contract is in excess of the District's needs for firm energy. The United States can sell the unused District firm energy. The contract of November 21, 1941 with the California-Pacific Utilities Company is for a purchase of the District's unused firm energy. The subject-matter energy of the contract of May 31, 1945 with the City of Los Angeles, the Southern California Edison Company, Ltd., and the California Electric Power Company is defined in the sixth Whereas clause as all Boulder firm energy unused by the District for pumping water "and unused by the resale consumers under contracts referred to in Article 5 hereof." The California-Pacific Utilities Company is one of such "resale consumers" to the extent of 20,000,000 kwh.

Thus, the conclusion is compelled that the 20,000,000 kwh unused District energy as of December 31, 1954, contracted for by the California-Pacific Utilities Company under its November 21, 1941 contract is excluded from the "unused energy" contracted for by the City of Los Angeles, Edison Company, and California Electric under the May 31, 1945 contract. Such unused District energy is available for sale by the United States without obtaining the consent of the City of Los Angeles, Edison Company, and California Electric. I recommend that letters, accordingly, be sent to Kime, Ernst, Davenport and Morris.

s/ WILLIAM J. BURKE
William J. Burke
Special Assistant to the Solicitor

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington 25, D. C.

March 2, 1954

Gentlemen:

Your letters of January 18, January 29, and January 30, 1954, respectively, pertaining to the future supply of Boulder Canyon Project power and energy from the Hoover Dam to the California-Pacific Utilities Company, have been received.

Subsequent to the receipt of your letters, this matter was referred to the Office of The Solicitor, Department of the Interior. There is enclosed for your information a copy of a Memorandum, dated February 18, 1954, prepared by Mr. William J. Burke, Special Assistant to the Solicitor.

In accordance with the Memorandum of the Office of The Solicitor, we are instructing the Commissioner of Reclamation to offer to extend the contract of the California-Pacific Utilities Company for such term as the Company may desire, up to midnight of May 31, 1987, with a provision that the power and energy may be withdrawn in whole or in part by the Metropolitan Water District of Southern California only upon a showing by the District of its needs for such power and energy. The Commissioner of Reclamation is also being instructed to offer a similar extension of contract to the Citizens Utilities Company.

We are sending copies of this letter to the Metropolitan Water District of Southern California, Colorado River Commission of Nevada, Arizona Power Authority, Cali-

fornia-Pacific Utilities Company, and Citizens Utilities Company.

Sincerely yours,

(sgd) DOUGLAS McKAY
Secretary of the Interior

The City of Los Angeles
Department of Water and Power
Los Angeles 54, California

Southern California Edison Company
Edison Building
Los Angeles 53, California

California Electric Power Company
Riverside, California

Enclosure

Copy to:

1. Metropolitan Water District of So. California
2. Colorado River Commission of Nevada
3. Arizona Power Authority
4. California-Pacific Utilities Company
5. Citizens Utilities
6. Regional Director, Boulder City, Nev.
7. Regional Counsel, Los Angeles, Calif.

(All with copy of Memorandum of Solicitor of 2/18/54)

Exhibit C-1

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington 25, D. C.

MAR—2 1954

Gentlemen:

During the last few months, there has been an interchange of correspondence between this office and The City of Los Angeles, the Southern California Edison Company, and the California Electric Power Company, with reference to the possibility of extending the contract of the California-Pacific Utilities Company for power and energy from the Hoover Dam Powerplant of the Boulder Canyon Project. Following the last letters from the above allottees, this matter was referred to the Office of The Solicitor of the Department of the Interior and as a result of a Memorandum from the Solicitor's Office we are instructing the Commissioner of Reclamation to offer to extend the contracts of both the California-Pacific Utilities Company and the Citizens Utilities Company as indicated in the attached copy of our joint letter, including the Memorandum, to the three allottees mentioned above.

You will note that a provision is to be included which will protect your rights with reference to again obtaining power and energy from the California-Pacific Utilities Company and the Citizens Utilities Company, at such time

as a showing can be made as to the needs of this power and energy for your own use.

Sincerely yours,

(sgd) DOUGLAS MCKAY
Secretary of the Interior

Metropolitan Water District
of Southern California
306 West Third Street
Los Angeles 13, California

Enclosures 2

Copy to: Regional Director, Boulder City, Nevada
Regional Counsel, Los Angeles, California

FHCraddock:mc

Exhibit D

CITIZENS UTILITIES COMPANY

March 16, 1954
Kingman, Arizona

E. G. Nielson, Regional Director
U. S. Bureau of Reclamation
Boulder City, Nevada.

Dear Mr. Nielson:

We wish to confirm our visit to Boulder City in reference to the letter of March 2, 1954 addressed to Mr. Milton S. Gould.

Please be advised that in accordance with the memorandum from the office of the Solicitor, dated February 18, 1954, and the letters of the Secretary of the Interior, we accept the offer to extend up to midnight of May 31, 1987 the existing contract for the supply of power and energy from Hoover Dam.

Yours very truly,

/s/ JOHN S. GIBBS
John S. Gibbs
Vice President

JCG:mlh

cc. Milton S. Gould
Douglas McKay, Secretary of the Interior

Exhibit F

DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington 25, D. C.

December 2, 1954.

MR. JOHN C. GIBBS,
Vice President, Operations and Engineering,
Citizens Utilities Co., Greenwich, Conn.

MY DEAR MR. GIBBS: As you know from Solicitor Davis' letter of September 1, 1954, and other correspondence, as well as from discussions of the matter between representatives of your company and of this Department, the conclusion has been reached that we are without authority to extend your company's existing contract for Hoover Dam energy.

It has no doubt been clear to your company from Mr. Davis' letter, as well as from the other recent correspondence and discussions, that the existing contract cannot and will not be extended or renewed and we must now reaffirm that position.

As you were advised in Mr. Davis' letter of September 1, we have reached this conclusion only with the greatest reluctance.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

Exhibit Q

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Washington 25, D. C.

September 1, 1954

Subject: Renewal of contract with reference to Needles, California and Kingman, Arizona for Boulder Canyon Power

Mr. John C. Gibbs, Vice President
Operations and Engineering
Citizens Utilities Company
125 East Putnam Avenue
Greenwich, Connecticut

Dear Mr. Gibbs:

The right of the Secretary of the Interior to renew the above contracts has been under consideration by the Department of the Interior for many months. The Solicitor's office has spent a great deal of time in the study of the problem. The matter was presented to the Acting Deputy Solicitor, Mr. William J. Burke, last spring, but he was only given two hours in which to examine the situation, and all persons have been informed that the opinion at that time expressed was only one of the most meager first impression.

I should first comment that in my mind the matter is not entirely clear, and the Secretary is confronted with

an ambiguous situation. My judgment, however, is that the Secretary lacks the authority to renew these contracts, because the power represented by them, which is a portion of the allotment of the Metropolitan Water District, was sold by that District to the Edison Company, California Electric and the City of Los Angeles by the contract of May 31, 1945.

There seems to be no question that this power is a portion of the original allotment to the Water District and that it was sold to Needles and Kingman because the Water District at that time had no use for it. The contracts by which it was sold provide that they expire December 31, 1954. As I see it, therefore, the fundamentals of the controversy hinge upon the language in that contract. Section 14(a) of that contract provides, in substance, that the Water District sells to the City, Edison and California Electric all firm energy allotted to the District unused by the District for pumping into and in its aqueduct "and unused by resale customers under contract referred to in Article 5 hereof." Article 5, which by the quoted language, I believe, we may consider as incorporated into the contract, identifies the present contracts of Kingman and Needles, both of which have an expiration date of December 31, 1954.

It seems to me that under this language, during the life of the contract, clearly any energy not used by Needles and Kingman is sold to the City, Edison and California Electric. Energy used by them under the contracts existing at that time is, of course, not sold to the three purchasers. The 1945 contract identifies the Needles-Kingman contracts and I feel incorporates these contracts into the 1945 contract. Such an incorporation has the effect, it seems to me, of including the expiration date of the Needles-Kingman contracts. In other words, there is incorporated into the

1945 contract an exception of the power sold, and that exception is the Needles-Kingman contracts, which run to a definite expiration date. Therefore, when the Needles-Kingman contracts expire December 31, 1954, the energy which Needles and Kingman have been taking becomes "unused * * * under the contract." The moment that the Needles-Kingman energy becomes unused by those communities, which it does when the contract expires and which the 1945 contract clearly indicates, the right to purchase that energy passes to the City, Edison, and California Electric.

I frankly concede that the language can be read to mean that the energy then (1945) being used by the resale consumers (Needles and Kingman) is not sold to the three purchasers, and, therefore, is exempt from the 1945 contract, in which case the Secretary might be at liberty to market it under the regulations, but considering the fact that the Needles contract is incorporated by reference into the 1945 contract, which would include the expiration date, I am inclined to the view that when the Needles contract expires, the energy which has been passing under that contract becomes "unused" * * * under the contract referred to in Article 5 hereof.

It cannot be overlooked that the Water District is the primary allottee of this power and that it agreed to purchase it and to pay for it, and the power belongs primarily to the Water District. The Water District is not using all of it. If no one else used it, the Water District would have to pay for it. Instead of that, the Water District sells it to the three purchasers. The Water District, it seems to me, could have reserved it and continued the contracts with Needles and Kingman; it did not elect to do so.

It is frankly conceded that fairness and the economics of the entire situation strongly impel one to a renewal of these contracts. It is with the utmost of reluctance that I have arrived at the opinion herein expressed. It is also to be regretted that the primary allottees do not see their way clear to permit the sale of this energy to these small communities, which lies much closer to the Boulder Canyon development that do the allottees, but as a matter of the legal interpretation of the contracts, I feel driven to the conclusion herein expressed.

Sincerely yours,

/s/ CLARENCE A. DAVIS
Solicitor

Exhibit R-1

(VIGNETTE)

IN REPLY REFER TO

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Region III
Boulder City, Nevada

November 8, 1954

To: Commissioner, Washington, D. C. Attention: 600

From: Regional Director

Subject: Extension of power sales contracts with California-Pacific Utilities Company and Citizens Utilities Company —Boulder Canyon Project

As you perhaps realize, this office finds itself in a rather difficult position relative to the above subject.

I believe you are cognizant of the circumstances which have brought about this situation. Your speedletter of March 4, 1954 instructed this office to prepare drafts of contract supplements extending the power sales contracts with both the California-Pacific Utilities Company and the Citizens Utilities Company. Drafts of such contracts were prepared and transmitted to your office by letter of March 16, 1954.

We have since that date received no indication from your office as to the status of this matter other than a copy of the Solicitor's September 1, 1954 letter to Mr. John C. Gibbs, Vice-President of Citizens Utilities Company, subject: "Renewal of contracts with reference to Needles, California and Kingman, Arizona for Boulder Canyon

Power". As evidenced by our teletype BC-WA 277 to you on October 13, 1954, the State of Nevada did not consider the Solicitor's letter of September 1 a definite reversal of the Secretary's letters of March 2, 1954 to each of the companies informing them that you had been instructed to extend the term of their respective contracts for power and energy from Hoover Dam Powerplant. Under the circumstances we feel that the companies' attorneys may view the Solicitor's letter of September 1 in a similar light, in which case they may claim that they have not been definitely notified that their contracts are not to be extended, and that lacking such notification they have taken no steps toward arranging for an alternate power supply. This situation bears examination to determine the need for an immediate formal notification to the companies informing them definitely of their status as regards future power supply.

The termination date of December 31, 1954 for the existing Hoover contracts with both of these companies is imminent and we presumably have no authority to continue deliveries of power and energy to them from Hoover Dam Powerplant after midnight of December 31, 1954. This office has no knowledge that definite arrangements have been made by either company for electric service to them in the vicinity of Kingman and Needles after December 31, 1954.

Representatives of this office have been in contact with local representatives of the Citizens Utilities Company and as you know there has been correspondence with your office relative to the California-Pacific Utilities Company. However, no specific proposals have resulted from these contacts with either company. The situation has developed to the point where the time remaining between now and December 31, 1954 will not permit physical arrangements being

made for delivery of power and energy to both companies from Davis Dam, and the continued delivery of electric power and energy from Hoover Dam Powerplant to both or either of the companies will involve new contractual arrangements with several Boulder Canyon Project allottees as well as with the companies.

You can undoubtedly appreciate my request to you for direction as to what action I should be prepared to take as of midnight December 31, 1954.

E. G. NIELSON

In triplicate
Copy to: Regional Solicitor, Los Angeles, California
Project Engineer, Boulder City

Exhibit R-2

W-BC 347 TELETYPE

To: Regional Director, Boulder City, Nevada
Attn: 3-600

Subject: Extension of power sales contracts with California-Pacific Utilities Company and Citizens Utilities Company—Boulder Canyon Project

Reurlet November 8 and other related correspondence, entire matter now being considered in Department. Will advise you when decisions have been reached.

W. A. DEXHEIMER
Commissioner

By W A DEXHEIMER

Exhibit R-3

W-BC 349 W-LA 17 TELETYPE

To: LA Regional Director, Boulder City, Nevada
LA Regional Solicitor, Los Angeles, California

Subject: Power supply for Citizens Utilities Company and California Pacific Utilities Company—Boulder Canyon Project

Confirming Nielsen's telephone conversation, Nielsen and Coffey with appropriate members their staffs should arrive here for conferences beginning November 29 dealing with engineering, legal and policy aspects of above subject and related matters.

W A DEXHEIMER
Commissioner of Reclamation

EDMUND T FRITZ
Edmund T. Fritz
Associate Solicitor
Water and Power

Copy to: Regional Director, Boulder City, Nevada
Regional Solicitor, Los Angeles, California
Commissioner of Reclamation
Code 603, Reclamation